

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

**THOMAS J. VILSACK, UNITED STATES
DEPARTMENT OF AGRICULTURE,
KEVIN SHEA, ADMINISTRATOR OF
ANIMAL PLANT AND HEALTH
INSPECTION SERVICE,
Petitioners,**

v.

**Premises Known and Described as Parcel ID
323012M036., ID 323012M073., ID
323012M072., and ID 323012M069., Situated
in Clermont County, Ohio, and Any ALB
Infested Trees and High-Risk Host Trees
Therein.**

Respondents.

CASE NO. 1:21-cv-00290

District Judge Timothy S. Black

**STIPULATED CONSENT
AGREEMENT UNDER AUTHORITY
OF 7 U.S.C. § 7731(c)(2)**

WHEREAS, A Petition for a Warrant for Entry pursuant to the Plant Protection Act, Title 7 United States Code, Chapter 104, Subchapter II, 7 U.S.C. §§ 7701, *et seq.*, and declarations in support thereof, have been filed with this Court. Together, these documents establish probable cause to believe that plant pests and articles regulated under Chapter 104 of the Plant Protection Act are on the premises and real property which is commonly known and identified as Thomas W. Brown's Clermont County Parcel ID numbers 323012M036., 323012M073., and 323012M072., and Donna Bowen's Clermont County Parcel ID number 323012M069. and issue this Stipulated Warrant pursuant to 7 U.S.C. § 7731(2). A particularized description of the Property is attached to the Declaration of Dr. Phillip Baldauf, as Exhibit A. (Baldauf Decl., Doc. 1-2, at PageID ##17-21), and will be referred to collectively as the "Property." Ms. Bowen and Mr. Brown will be referred to collectively as the "Browns."

WHEREAS, the Court issued Warrant on February 25, 2021 for the search and seizure of trees on the Property, and pursuant to which 32 High Risk Host Trees were removed and destroyed on March 8, 2021 (the “Removed High Risk Host Trees”) before the Warrant was withdrawn as mistakenly filed by the Court later that same day. The Removed High Risk Host Trees are shown on the attached map (as Exhibit A) as Removed High Risk Host Trees.

WHEREAS, this Court entered a Stipulated Warrant on May 25, 2021 ordering and granting USDA the authority to immediately enter, seize and remove thirty-four (34) trees on the Property identified in a 2019 Survey conducted by the Ohio Department of Agriculture as being infested with the Asian Longhorned Beetle (“ALB”). The Stipulated Warrant also authorized the removal of up to 30 additional ALB-infested trees from the Property, if found.

WHEREAS, all thirty-four (34) ALB-infested trees identified in the 2019 Survey were removed by APHIS from the Property. Further, two (2) Additional Infested trees were identified and removed from the Property.

WHEREAS, the Stipulated Warrant was returned with an inventory identifying the ALB-infested trees that were removed. A new survey identifying all ALB high risk host trees and all non-ALB host trees on the Property was prepared by APHIS and provided to the Browns (“2021 Survey.”)

WHEREAS, the Browns have agreed to permit APHIS on the Property, on a reoccurring basis, for the purpose of inspecting and surveying any additional ALB-infested trees pursuant to their authority under Section 414 of the Plant Protection Act (7 U.S.C. § 7714). In return, APHIS agrees not to pursue the issuance of another warrant, pursuant to 7 U.S.C. § 7731(2), from this

Court for the immediate removal of all the high-risk host trees identified in the recently completed 2021 Survey on the Property.

In order to serve the competing needs of removal of any and all ALB-infested trees found on the Property while also protecting the property interest of the Browns, the Browns agree to permit APHIS to enter the Property on an as needed basis, for a period of six years beginning on the date this agreement is entered by the Court, as long as the property remains within an ALB quarantine area. For the duration of this agreement, during the time the Property remains within an ALB quarantine area, APHIS will be permitted access to inspect and/or survey the Property in its entirety not more than one (1) time every 365 days. APHIS officers, employees, agents, and representatives will be permitted access for such time as is necessary to complete all inspection and survey work on the Property in order to prevent the further spread of the ALB by inspecting and surveying for the identification of additional ALB-infested trees.

The Court has considered the filings in the record by both parties and understands that the Browns agree to permit APHIS to re-enter the Property on a reoccurring basis, as provided below, in order to find any and all additional ALB-infested trees. Specifically, the parties have agreed and the Court issues this STIPULATED CONSENT AGREEMENT under authority of 7 U.S.C. § 7731(2) ordering and granting the authority to proceed as follows:

1. APHIS officers, employees, agents, contractors, and representatives may enter the Property up to one (1) time period long enough to do any required work, within a 365-day window, until ALB is declared eradicated from the area for purposes of conducting inspections and surveys (the “Tree Inspections”). APHIS will provide the Browns with one-week prior notice of the date when Tree Inspections will begin. Notice shall be delivered to the Browns by leaving written notice at the residence of Tom Brown and Judy Winkler, 2834

State Route 232, Bethel, Ohio 45106 and of Donna Sue Bowen, 2834 State Route 232, Bethel, Ohio 45106, and by calling the Browns at the phone number provided to APHIS's counsel.

2. During Tree Inspections, if any trees are identified as being infested with ALB ("Infested Trees"), APHIS shall conspicuously mark such trees with orange spray paint.
3. Upon completion of the Tree Inspection, APHIS shall inform counsel for the Browns that the inspection has been completed and shall provide to the Browns' counsel documentation generated by APHIS sufficient to identify the location, species, Diameter at Breast-Height of each Infested Tree, and Work Plan for the subsequent removal of the Infested Tree(s).
4. Any dispute as to conduct of inspections, or surveys shall be handled through counsel for both parties.
5. The Browns shall cooperate with APHIS and in no way interfere with the inspections, or surveys by APHIS and its contractors. Communication and questions about any and all aspects of the USDA APHIS ALB Program shall be directed to 513-381-7180.
6. APHIS shall cooperate with the Browns in order to minimize any interference with the farming activities on the Property.
7. As part of the final clean up and restoration from the tree removal conducted in the Spring and Summer of 2021, APHIS shall have its contractor perform the following work in the area of the Removed Infested Trees: (a) stumps cut flush to the ground (not higher than 2" from ground); (b) any ruts caused by tree removal equipment will be leveled with suitable topsoil; and (c) the area shall be seeded and strawed. Work in the area of Removed High Risk Host Trees will include: (a) the stumps for each of the Removed High Risk Host Trees

shall be ground down; (b) any hole created by the stump grinding shall be filled with suitable topsoil; and (c) the area shall be seeded and strawed. The foregoing work shall be done in accordance with generally accepted industry standards applicable to such work. The foregoing final clean up shall be completed no later than 30 days after this agreement is finalized, weather dependent.

8. The Court expressly and explicitly retains jurisdiction to enforce this consent agreement upon appropriate application to the Court.

DATED this the 20 day of January, 2022.



United States District Judge

Respectfully submitted,

/s/ William B. King II
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